

ENTERED

September 22, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JESUS CARLOS LOPEZ BEJARANO,	§	
Reg. No. 13852-196,	§	
	§	
Petitioner,	§	
	§	CIVIL ACTION NO. H-16-2819
v.	§	(Criminal Number H-15-450)
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

Petitioner, Jesus Carlos Lopez Bejarano, has filed an Abridged Motion to Vacate, Set Aside Criminal Conviction and Sentence Pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion") (Docket Entry No. 32).¹

On September 24, 2015, petitioner pleaded guilty to illegal reentry after deportation following an aggravated felony conviction in violation of 8 U.S.C. § 1326(a) and (b)(2); and on December 21, 2015, he was sentenced to seventy-seven months in prison and three years of supervised release (Judgment in a Criminal Case, Docket Entry No. 24).

In his § 2255 Motion Lopez Bejarano argues that he is entitled to relief based on the Supreme Court's decision in Johnson

¹All docket entry references are to Criminal No. H-15-450.

v. United States, 135 S. Ct. 2551 (2015). The court has carefully reviewed Lopez Bejarano's motion as required by Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts and concludes that a response to his motion is not required.

In Johnson the Court held that the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii), for purposes of sentence enhancement for a felon's possession of a firearm, was unconstitutionally vague. In Welch v. United States, 136 S. Ct. 1257 (2016), the Court held that its decision in Johnson announced a substantive rule that applied retroactively on collateral review.

Lopez Bejarano's sentence was not based on the ACCA or 18 U.S.C. § 16, and neither the ACCA nor 18 U.S.C. § 16 affected his advisory sentencing guideline range. See Presentence Investigation Report, Docket Entry No. 16, pp. 5-11. The court therefore concludes that Lopez Bejarano is not entitled to relief under § 2255. Accordingly, Lopez Bejarano's Abridged Motion to Vacate, Set Aside Criminal Conviction and Sentence Pursuant to 28 U.S.C. § 2255 (Docket Entry No. 32) is **DISMISSED WITH PREJUDICE**.

Petitioner's Motion and Request for Appointment of Counsel (Docket Entry No. 33) is **DENIED**.

The Clerk of Court is **ORDERED** to provide a copy of this Memorandum Opinion and Order to Jesus Carlos Lopez Bejarano and to

the United States Attorney for the Southern District of Texas, and to file a copy of this Memorandum Opinion and Order in the corresponding civil action.

SIGNED at Houston, Texas, this 21st day of September, 2016.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE